UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE

SCHWAN'S HOME SERVICE, INC.
A WHOLLY OWNED SUBSIDIARY OF
THE SCHWAN FOOD COMPANY

and **Case No. 27-CA-066674**

PATRICK K. WARDELL, an Individual

Todd D. Saveland, Esq, and Renee C. Barker, Esq.,
Denver, Colorado, for the General Counsel
Amy J. Zdravecky, Esq., of Franczek Radelet,
Chicago, Illinois, for the Respondent

DECISION

Statement of the Case

Gerald A. Wacknov, Administrative Law Judge: Pursuant to a notice of hearing in this matter was held before me in Denver, Colorado on March 27, 2012. The charge in the captioned matter was filed by Patrick K. Wardell, an Individual, on August 29, 2011[1] and an amended charge was filed by Wardell on November 30, 2011. Thereafter, on December 30, 2011 the Regional Director for Region 27 of the National Labor Relations Board (Board) issued a consolidated complaint and notice of hearing alleging violations by Schwan's Home Service, Inc., a Wholly Owned Subsidiary of the Schwan Food Company (Respondent) of Section 8(a)(1) of the National Labor Relations Act (the Act).[2] The Respondent, in its answer to the complaint, duly filed, denies that it has violated the Act as alleged.

The parties were afforded a full opportunity to be heard, to call, examine, and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the Acting General Counsel (the General Counsel) and counsel for the Respondent. Upon the entire record, and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

[1] This filing date appears as amended at the hearing.

[2] The consolidated complaint contains an additional case number (Case 27-CA-021969). On March 26, 2011, the Regional Director severed that case from complaint and the allegations pertaining to that case were rescinded.

Findings of Fact

I. Jurisdiction

The Respondent is a Minnesota corporation with offices and places of business throughout the United States, including a facility in Loveland, Colorado. The Respondent is engaged in the production, manufacturing, marketing, distribution, retail and nonretail sale of frozen food products. In the course and conduct of its business operations the Respondent annually derives gross revenues in excess of $500,000 and annually receives and purchases at its Loveland, Colorado facility, good materials and services valued in excess of $5000 directly from points outside the State of Colorado. It is admitted and I find that the Respondent is, and at all material times has been, an employer within the meaning of Section 2(2), (6) and (7) of the Act.

II. Alleged Unfair Labor Practices

A. Issues

The principal issues in this proceeding are whether the Respondent has promulgated and maintained rules and policies in various documents that restrict employee Section 7 rights in violation of Section 8(a)(1) of the Act.

B. Background
Facts and Analysis

The Respondent sells quality frozen food products to residential and business customers, door to door. It employs about 7000 employees, working out of approximately 400 facilities, called depots or warehouses, located in the contiguous 48 states. Each depot has about 16 route sales representatives who sell and deliver the products, using refrigerated vehicles furnished by the Respondent. In addition, each depot has from two to four warehouse employees who receive products from suppliers and load up the route sales representatives' trucks each day.

The complaint alleges that certain employee handbook policies, and other company rules, contracts, and suspension and termination notices contain facially unlawful provisions that would reasonably tend to chill employees' Section 7 rights to engage in concerted protected activity and/or union activity.

Dave Bock, Respondent's vice-president and assistant general counsel, is also the Respondent's ethics officer and corporate affirmative action compliance officer. Bock testified as follows regarding the daily routine of the route sales representatives:

> It's a long day for what we call our RSRs, route sales representatives. They come in the morning, anytime between 8:00 and 10:00. There's usually a group meeting where they get together and they'll discuss their products. There's a lot of comradery. They all meet in one common area in the depot, usually a square or round table in the middle. They'll have stools or chairs around this table. They get their orders ready, any preorders they might have that day. They talk to each other. Management is present sometime during those meetings. They get in their trucks and they head out. And after a long day, they come back to the same depot at night, handle their records, their orders, make delivery to the local bank

> and most depots to make their deposits for the day. So there's—the employees get together before each day's shift, and they get together each day after their shifts.

Bock testified that he has been present during many of these group meetings and has listened to the employees' discussions about wages, hours and working conditions, including complaints about supervisors. Such discussions are routine, and are not discouraged. All route sales representatives in a given geographic area are paid the same base salary, with commissions based on all sales and with additional guarantees for showing up to work and meeting time targets.

According to Bock, the earnings of each route sales representative is

> an open book. You walk into a depot. Each employee's sales goals and actual day-to-day sales are posted for everyone to see. It's a very competitive environment, generally, a very friendly competitive environment. Employees are teasing each other about outdoing each other or about a bad day they might have had. But the numbers are posted for all to see and are the subject of much discussion.

Such discussions are encouraged; no employee has ever been disciplined for discussing sales goals or compensation numbers with other employees, and each employee knows, on a daily basis, how much their coworkers are earning.

At all material times, the Respondent has maintained and issued to all new hires, including warehouse workers and route sales representatives, an employee handbook consisting of 29 pages, entitled the "Schwan Food Company Employee Handbook." Four of the rules contained in the current Employee Handbook are at issue in this matter.[3] The Respondent has denied that any portions of the rules are unlawful.

> (Rule 18): Solicitation and Organizational Work
>
> With the exception of the annual United Way drive and other charitable activities sponsored by the company, all employees are strictly prohibited from soliciting other employees or being solicited by other employees or non-employees for any purpose during working time in any work area of a plant or other company facilities. All employees are also strictly prohibited from distributing, receiving or posting pamphlets, cards, handbills or other written materials during work time in any work area and any public area of a plant or other company facilities. **Distribution and solicitation is permitted during non-work time (such as free time, rest breaks or lunch time) in non-work areas (break room) of a plant or other company facilities).**
>
> (Rule 12): Security of Company Information
>
> **You are not permitted to reveal information in company records to unauthorized persons or to deliver or transmit company records to unauthorized persons. Trade secret information including, but not limited to, information on devices, inventions, processes and compilations of**

[3] The alleged unlawful provisions of the rules are in bold type.

information, records, specifications, and information concerning customers, vendors or employees shall not be disclosed, directly or indirectly, or used in any way, either during the term of employment or at any time thereafter, except as required in the course of employment with Schwan. Employees will abide by Schwan's policies and practices as established from time to time for the protection of its trade secret information. **Schwan's business shall not be discussed with anyone who does not work for Schwan or with anyone who does not have a direct association with the transaction.**

(Rule 17): Use of the Company Name

You are not permitted to purchase any material as a charge to the company without authorized management approval. **Any articles, speeches, records of operation, pictures or other material for publication, in which the company name is mentioned or indicated, must be submitted, through your supervisor, for approval or disapproval by the Corporate Communications and Law Departments prior to release.** You are not permitted to negotiate or sign any lease, purchase agreement, bill of sale, contract or other legal document as a representative of the company, unless authorized to do so by management nor are you permitted to express or imply to any vendor the intention of the company to purchase, rent or lease any tangible property, equipment, material, space or services.

(Rule 26): Conflicts of Interests

Employees shall avoid activities that could appear to influence their objective decisions relative to their company responsibilities. **Continued employment with the company is dependent upon strict avoidance of:**
a. Conflicts of interest or the appearance of such conflicts.
b. Conduct on or off duty which is detrimental to the best interests of the company or its employees.
c. Employees shall avoid activities that might appear to result in fraud or waste.
d. Employees may not engage in any activity, on or off company premises, or be employed in any capacity at Schwan which creates a actual or perceived conflict of interest (e.g. an employee may not supervise an immediate family member or a person with whom they have an intimate relationship; an employee may not have a financial interest in a supplier or competitor). Please contact your local Human Resource representative for specifics on how the employment of relatives is handled in your facility.

The General Counsel maintains that Rule 18 is unlawful because it specifically permits distribution and solicitation during nonwork time in nonwork areas and, accordingly, would be reasonably understood by employees to prohibit such activity in work areas during employees' nonwork time; therefore, this restriction constitutes an impermissible infringement on employees' solicitation and distribution rights under the Act as set forth in *Republic Aviation, Corp. v. NLRB*, 324 U.S. 793, 803 fn. 10 (1945).

In *UPS Supply Chain*, 357 NLRB No. 106 (2011) the Board stated:

> We find, contrary to the judge, that the Respondent's no-solicitation rule violates Section 8(a)(1). Employers may ban solicitation in working areas during working time but may not extend such bans to working areas during nonworking time. See, e.g., *Restaurant Corp. of America v. NLRB*, 827 F.2d 799, 806 (D.C. Cir. 1987) ("[A]n employer may not generally prohibit union solicitation . . . during nonworking times or in nonworking areas.") (citing *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105, 112–113 (1956); *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 797–798 (1945)). In discussing the Respondent's no-solicitation rule, the judge focused solely on the restrictions placed on employees' work time. However, the Respondent's rule also prohibits solicitation in work areas, and does so without qualification. Fairly read, an employee would reasonably understand the rule to ban solicitation in work areas even during nonwork time. The rule is therefore impermissibly overbroad and violates Section 8(a)(1).

Bock testified that the Respondent has a "very open culture" with regard to employee discussions of wages, hours and working conditions that permits such discussions on working time in working areas. Further, this policy has been extended to situations in which the employees, prior to impending union elections at two depots, one in Round Rock, Texas about 18 months ago, and another in Denver during an unspecified time period, were encouraged by Bock and other corporate representatives to discuss union representation "pro and con" during working time and in working areas, "not only in our presence, but then we left and said continue your discussion, both sides…in the interest of making a full and fair informed decision." Bock testified that in this manner the Respondent's "solicitation policy" not only has not been used to preclude union activity but rather has been used to encourage such discussion.[4]

Employees' discussions of wages and related matters among themselves in a spirit of competitive comradery seem clearly designed as a company policy to promote sales production; however, mere "discussions" are not tantamount to either "solicitation" or "distribution," and therefore employees would not reasonably interpret this interactive competitiveness as an invitation to discuss, solicit for, and distribute materials on behalf of unions during work time and in work areas.[5] Further, I find that Bock's anecdotal evidence in this regard-- involving two of 400 depots nationwide, and perhaps fewer than 40 employees-- is insufficient to put all 7000 of the Respondent's employees on notice that they may ignore the plain meaning of the language in Handbook Rule 18 which implicitly, but clearly, prohibits solicitation and distribution in work areas. Indeed, to the extent other employees at other depots may be aware of the discussions that occurred in Round Rock, Texas and Denver, it appears they would reasonably conclude that specific permission by management is needed before such union-related discussions during work time in work areas may take place. Accordingly, I find that by maintaining the rule in its handbook the Respondent has violated and is violating Section 8(a)(1) of the Act as alleged.

[4] It appears, therefore, that Bock would equate employees' merely expressing their pro-union views during such discussions as "solicitation." Bock did not testify that employees at these meetings were also encouraged to engage in "solicitation" of union authorization cards or "distribution" of union materials.

[5] This is particularly true given the Respondent's handbook policy entitled "Company Philosophy Towards Labor Unions," including the following: "The company is opposed to the unionization of Schwan because the needs of our employees are best served by retaining the ability to converse one-on-one with management, avoiding third party intervention and rewarding employees based on each employee's individual merit…By remaining union free, the working atmosphere between employees and between employees and management will remain open and honest."

Regarding Handbook Rule 12, Security of Company Information, Handbook Rule 17, Use of the Company Name, and Handbook Rule 26, Conflicts of Interests, I conclude that an employee reading these rules would reasonably understand that the rules were designed to protect and insulate the Respondent from situations which would compromise its financial, trade secret, brand name and other proprietary interests including the "good will" associated with the Respondent's brand name and the acquiring and retention of customers which could be adversely affected by inappropriate employee conduct "on or off duty." I do not believe the rules, singly or collectively, even though they prohibit disclosure of information regarding employees and also prohibit certain employee conduct, would reasonably cause this Respondent's employees to refrain from protected activity under the Act. I shall dismiss these allegations of the complaint. See *Lafayette Park Hotel*, 326 NLRB 824 (1998); *Super Kmart*, 330 NLRB 263 (1999); *Mediaone of Greater Florida*, 340 NLRB 277 (2003).

The complaint alleges that certain language contained in Respondent's "Employment, Confidentiality, Ownership & Noncompete Agreement" (Agreement) is unlawful. The Agreement is a lengthy, single-spaced, small font, difficult-to-read, two-page, double-sided, standardized document. All Respondent's employees are required to execute the Agreement at the time of hire and again sign the then-current Agreement when they are promoted or change jobs within the company. Under the heading "Confidential and Proprietary Information; Ownership and Assignment of Rights," the following paragraph appears:

> **Stipulation.** Employer and Employee agree that during the course of Employee's employment, Employee will have access to Confidential and Proprietary Information as defined below. Such information has been developed by Employer at great expense over many years of substantial effort, and were competitors of Employer to obtain such information there would result a substantial and irreparable adverse effect upon the business of Employer. Employee agrees that the Employer owns all such Confidential and Proprietary Information. (Underlining supplied.)

Under the heading **"Scope"** the Agreement goes on to state, "Confidential and Proprietary information shall include any information pertaining in any way but not limited to…," and then sets forth an extensive catalogue of what is considered to be encompassed within the definition of confidential and proprietary information. Toward the end of this litany of matters, items and concepts that the Respondent deems to be confidential and proprietary, is included the following: "any information pertaining to the wages, commissions, performance, or identity of employees of Employer."

The complaint alleges and the General Counsel maintains that as the Agreement restricts employees from disclosing to "any person not in the employ of the Employer" any "Confidential or Proprietary" information, and as confidential and proprietary information includes the above-quoted language pertaining to the "wages, commissions, performance or identity of employees," such a restriction precludes employees from sharing such information with a union and is therefore violative of Section 8(a)(1) of the Act.

I conclude that employees entering into the Agreement, who make the effort to read through it, would reasonably understand that the Respondent in this portion of the

Agreement is concerned with, and is attempting to prohibit the route sales representatives from disclosing, "confidential and proprietary" information to the Respondent's "competitors," and that this is the thrust, import and intent of this section of the Agreement. The Respondent has legitimate concerns that its route sales representatives could be more easily recruited away from the Respondent by competitors if competitors became aware of the identity, performance skills, and earnings of particular route sales representatives. Accordingly, I find that employees would not reasonably read this rule as prohibiting Section 7 activity. I shall dismiss this allegation of the complaint. See *Mediaone of Greater Florida*, *supra*, at page 279.

The complaint alleges that certain language contained in Respondent's termination letters is unlawful. The Respondent, in a prehearing document headed "Joint Stipulation and Joint Exhibits" stipulated that

> At times material to this proceeding, the Respondent issued termination letters at various times and to various employees nationwide, which stated:
>
> > In addition, the intent of this letter is to inform you that you are prohibited by the terms of the employment agreement you signed with Schwan's from contacting your former customers and former co-workers.

In support of this stipulation a termination letter dated April 22, 2011 containing the above language was introduced in evidence by the General Counsel

However, despite this stipulated language, the Respondent, prior to the hearing herein engaged in an extensive, random investigation of termination letters, which demonstrated that not one of the hundreds of termination letters issued over an extended period of time contained language prohibiting terminated employees from contacting "former co-workers."[6] Rather, all of the termination letters, introduced into evidence, randomly compiled due to the fact that there were simply too many terminations to perform an exhaustive survey,[7] contained the following language:[8]

> This letter will also serve as a reminder that at the time of hire, you executed an Employment, Confidentiality and Non-compete agreement, which includes, but is not limited to an agreement that you will not contact Home Service Customers you previously serviced during your employment.

[6] Obviously, the Respondent's random investigation did not uncover the letter introduced into evidence by the General Counsel in support of the stipulation.

[7] Bock testified that the Respondent's voluntary and involuntary termination rate at the current time "is about 60 percent a year right now…so you're talking about 4,000 plus terminations."

[8] A few of the letters contained no language whatsoever prohibiting the contacting of either customers or former co-workers.

The General Counsel maintains that the language in either termination letter, whether prohibiting terminated employees from contacting former customers, or from contacting both former co-workers and customers, is similarly violative of the Act.

I credit the testimony of Bock and find that he personally caused the survey to be conducted by subordinates in a valid and unbiased manner that was not manipulated to arrive at a preconceived result. Accordingly, I find that the standard form for termination letters contains the immediately foregoing language, and not the language set forth in the stipulation. Thus, while the stipulation states that termination letters "at various times and to various employees nationwide" contained the stipulated language, the evidence shows, and I find, that such letters do not reflect the Respondent's standard and customary practice.

Bock testified that the relationship between the route sales representatives and customers is commonly a very close relationship that could be compromised in the event of termination. The route sales representatives deliver products to customer's homes and businesses on a regular basis, sometimes receive gifts from customers for good service, have the credit card numbers of customers, and often have access to the customers' homes when they are away so that frozen food products may be placed in the customers' freezers. For obvious reasons the Respondent simply does not want the customers to become enmeshed in termination matters: not only could this cause the customers to refrain from buying products from the Respondent, but also terminated employees could attempt to solicit business for competitors of the Respondent.

The termination letters refer to the "employment agreement" or "Employment, Confidentiality and Non-compete" agreement as the underlying document restricting contact between terminated employees and customers or former co-workers. Accordingly, the termination letters alone are inherently incomplete, and the termination letters and Agreement to which the letters refer must be read together.

The portion of the Agreement pertaining to contacting customers is as follows:

> Employee agrees that during the term of Employee's employment and for twelve (12) months after the termination of such employment, Employee will not…contact or solicit competing business from anyone who had been a customer of Employer in the geographic or job function areas assigned to Employee.

The portion of the Agreement pertaining to contacting former co-workers is as follows:

> Employee agrees that during the term of Employee's employment and for twelve (12) months after the termination of such employment, Employee will not induce or attempt to induce any person who is an employee of Employer to leave the employ of Employer and engage in any business which competes with Employer.

I find that a reasonable reading of either termination letter together with the Agreement would cause a terminated employee to understand that the restrictions regarding contacting either current employees or customers is not designed to curtail activity protected by Section 7 of the Act, but rather is designed to preclude terminated employees from enmeshing customers in termination matters and from recruiting either customers or current employees for competitors of the Respondent. Accordingly, the Respondent has overriding legitimate business considerations for imposing such restrictions. I shall dismiss this allegation of the complaint.

The complaint alleges that certain language contained in the Respondent's "Employee Suspension Notice" is unlawful. Insofar as the record evidence shows, the Employee Suspension Notice is a one-page pre-printed document issued to employees who are being placed on an unpaid suspension either for disciplinary reasons or pending the outcome of an internal investigation. The notice contains a space for specifying the reason(s) for the suspension, and advises the employee of certain requirements and prohibitions to which the employee must adhere during the suspension/investigation.

The parties stipulated that:

> At times material to this proceeding, the Respondent issued suspension notices at various times and to various employees nationwide, which stated:
>
> > You are prohibited from contacting customers or employees and from discussing your status with anyone inside or outside the company.

In addition, the single suspension notice introduced into evidence in this proceeding, dated July 27, 2011, contains further prohibitions:

> You are prohibited from entering any property owned or leased by The Schwan Food Company, unless requested by your manager or the investigator.
>
> You are prohibited from accessing any company information during this suspension. Not limited to, but including any e-mails or voicemails.

A blanket rule prohibiting employees under investigation for rule or policy infractions from contacting and discussing the matter with other employees during the course of the investigation is per se unlawful. The Board, in *Hundai America Shipping Agency, Inc.,* 357 NLRB No. 80 (2011), adopted the conclusion of the administrative law judge on this issue, who stated, at slip op. p 15, as follows:

> In light of the *Phoenix Transit* and *[Caesar's] Palace* cases,[9] it seems obvious that the Board is attempting to strike a balance between the employees' Section 7 right to discuss among themselves their terms and conditions of employment, and the right of an employer, under certain circumstances, to demand confidentiality. The burden is clearly with an employer to demonstrate that a legitimate and substantial justification exists for a rule that adversely impacts on employee Section 7 rights.

[9] *Phoenix Transit Systems,* 337 NLRB 510 (2002); *Caesar's Palace*, 336 NLRB271 (2001).

> I am of the view that in the matter at hand, the Respondent has failed to meet its burden. It is undisputed that the Respondent's managers and human resource supervisors routinely instruct employees involved in investigations not to talk with other employees about the substance of those investigations. Such admonitions are apparently given in every case, without any individual review to determine whether such confidentiality is truly necessary. Under the Board's balancing test, it is the Respondent's responsibility to first determine whether in any given investigation witnesses need protection, evidence is in danger of being destroyed, testimony is in danger of being fabricated, and there is a need to prevent a cover up. Only if the Respondent determines that such a corruption of its investigation would likely occur without confidentiality is the Respondent then free to prohibit its employees from discussing these matters among themselves. There is no evidence that the Respondent conducts any such preliminary analysis. To the contrary, it seems that the Respondent merely routinely orders its employees not to talk about these matters with each other.
>
> The Respondent has failed to demonstrate that a legitimate and substantial justification exists for a rule that adversely impacts on employee Section 7 rights. It has failed to meet its burden of proof. Accordingly, I conclude that the Respondent has unlawfully maintained an overly broad and discriminatory oral rule prohibiting employee from discussing matters under investigation and by implicitly threatening employees with discipline if they violate that rule.

The Respondent maintains that the evidence introduced by the General Counsel does not show that the Respondent's prohibition applies in all suspension situations. Thus, the aforementioned stipulation merely concedes that the Respondent issued such suspension notices "at various times and to various employees nationwide."

Unlike the similar stipulated language pertaining to the termination notices, *supra,* however, regarding which the Respondent initiated an extensive investigation and survey and introduced abundant evidence that the single termination notice placed in evidence by the General Counsel appeared to be an anomaly or at least not a standard and customary practice, the Respondent has not demonstrated that the suspension notices, nationwide, as a general practice, do not contain the aforementioned unlawful language. Nor did Bock so testify.

In the instant case it is clear that the Respondent's pro-forma suspension notices limiting employees Section 7 right to discuss matters for which they are being investigated, or for which they are receiving a disciplinary suspension,[10] is unlawful. As noted above, an employer may not impose such restrictions absent a substantial justification for doing so in each given situation. *Hundai America Shipping Agency, Inc., supra.* Accordingly, by such conduct, I find the Respondent has violated and is violating Section 8(a)(1) of the Act as alleged.

Conclusions of Law and Recommendations

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2) (6) and (7) of the Act.

[10] It would seem to make no difference whether the investigation is taking place while the employee remains on the job, whether the suspension is a disciplinary suspension, or whether the employee is suspended pending investigation. In each of these instances the employee is entitled to exercise his or her Section 7 rights.

2. The Respondent has violated Section 8(a)(1) of the Act as found herein.

The Remedy

Having found that the Respondent has violated and is violating Section 8(a)(1) of the Act, I recommend that the Respondent be required to cease and desist from promulgating and maintaining in effect the employee handbook provision and the standard suspension notice that preclude and interfere with the Section 7 rights of employees to engage in union and protected concerted activity. I further recommend that the Respondent be required to cease and desist from in any other like or related manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act. Finally, I shall recommend the posting of an appropriate notice, attached hereto as "Appendix."

ORDER[11]

The Respondent, Schwan's Home Service, Inc., a Wholly Owned Subsidiary of The Schwan Food Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating and maintaining in effect the employee handbook provision and the standard suspension notice that preclude and interfere with the Section 7 rights of employees to engage in union and protected concerted activity.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action, which is necessary to effectuate the purposes of the Act:

(a) Modify the employee handbook provision and the standard suspension notice found to interfere with the rights of employees to engage in union and protected concerted activities under Section 7 of the Act, and advise its employees, nationwide, by appropriate means, that the handbook provision and the standard suspension notice have been revised.

(b) Within 14 days after service by the Region, post at its facilities nationwide copies of the attached notice marked "Appendix."[12] Copies of the notice, on forms provided by the Regional Director for Region 27, after being duly signed by Respondent's representative(s), shall be posted immediately upon receipt thereof, and shall remain posted by Respondent for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the

[11] If no exceptions are filed as provided by Section 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Section 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[12] If this Order is enforced by a judgment of the United States Court of Appeals, the wording in the notice reading, "Posted by Order of the National Labor Relations Board," shall read, "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Respondent to ensure that the notices are not altered, defaced, or covered by any other material. Further, when the handbook provision and standard suspension notice have been modified, notify its employees nationwide, by appropriate means, of the new modified handbook and standard suspension notice provisions.

(c) Within 21 days after service by the Regional Office, file with the Regional Director for Region 27 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated at Washington, D.C. June 6, 2012

Gerald A. Wacknov

Gerald A. Wacknov
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL modify our employee handbook provision that limits your right to engage in the above activities during nonwork time in work areas of our facilities.

WE WILL modify our standard suspension notice form that limits the right of suspended employees from engaging in the above activities during periods of disciplinary suspension or when they are suspended pending investigation.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

SCHWAN'S HOME SERVICE, INC.
A WHOLLY OWNED SUBSIDIARY OF
THE SCHWAN FOOD COMPANY
(Employer)

Dated: _____ By: _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered with any other material. Any questions concerning this notice or compliance with its provisions may be referred to the Board's office, 600 17th Street - 7th Floor, North Tower, Denver, CO 80202-5433, Phone 303/844-3551.